INSTITUTE FOR DEVELOPMENT STUDIES

UNIVERSITY COLLEGE, NAIROBI

Discussion Paper No. 73

THE INDUSTRIAL COURT IN KENYA: AN ECONOMIC ANALYSIS*

Dharam Ghai and Charles Hollen

November, 1968

The Industrial Court in Kenya: An Economic Analysis*

by

Dharam Ghai and Charles Hollen

Introduction

The adjudication of industrial disputes by independent public bodies is becoming an increasingly important feature of the industrial relations in developing countries. Among the Commonwealth countries alone, Aden, Ceylon, India, Kenya, Pakistan, Singapore, Malaysia, Trinidad and Tobago, Uganda and Tanzania have established some sort of industrial courts in recent years.[1] Their popularity, in large part, is a reflection of the dissatisfaction felt with some aspects of the existing system of voluntary collective bargaining for the determination of terms and conditions of employment.[2] Perhaps the most important motive behind the creation of industrial courts is the desire to reduce the incidence of strikes. In this respect, the industrial courts may be looked upon as a substitute for other ad hoc methods of governmental intervention for the settlement of industrial disputes such as the appointment of conciliation and investigation panels, and boards of inquiry. Industrial courts are preferred to such ad hoc methods in that they are expected to bring greater expertise and consistency to bear on the resolution of industrial disputes. Another and an increasingly important reason for the establishment of industrial courts is the realization that questions of wage levels and other conditions of employment have an importance transcending the interests of the two parties directly involved. This concern with the broader effects of individual wage decisions is usually reflected in the guide lines laid down for the court. These may either take the general form of requiring the court to take account of public interest, as in Australia and Singapore, or the more specific form of detailed considerations that ought

---

*We are indebted to Mr. Saeed Cockar, President of the Kenya Industrial Court, Mr. Clement Lubembe, Secretary-General of the Central Organization of Trade Unions (Kenya), Mr. Peter Dodds from the Federation of Kenya Employers, and a number of employers and trade union leaders for valuable discussions on various aspects of the Industrial Court's work. More than ever, it is necessary to emphasise that we alone are responsible for the views expressed in this paper.

to influence its decisions, as in Tanzania.[3]

Once established, the industrial courts exercise an important influence on both the pattern of industrial relations and the level of wages and conditions of service for employees. The latter in turn have important implications for the distribution and growth of national income. In this paper, we have attempted to evaluate the economic impact of the decisions of one such institution - the Industrial Court of Kenya. Before coming to this evaluation, however, it is necessary to give a brief description of the origin, structure and operation of the Industrial Court.

Origin, Structure and Operation.[4]

The Court was first established in July, 1964, following the signing of the Tripartite Agreement in February, 1964.[5] Section C of the Agreement stated, "An Industrial Court will be established forthwith to which all disputes unresolved by voluntary negotiating machinery will be referred for arbitration..." Prior to the establishment of the Court, the resolution of trade disputes was governed by The Trade Disputes (Arbitration and Inquiry) Ordinance of 1962. The Ordinance provided for the settlement of disputes through conciliation by the Labour Commissioner, and through Arbitration Tribunal and Board of Inquiry. The Trade Disputes Act of 1964 further strengthened the machinery of dispute settlement by the creation of the Industrial Court, but in all other respects left the old system essentially unchanged. The two main reasons for the establishment of the Court were the need to reduce the incidence of strikes and the provision of a regular and expert machinery for the settlement of industrial disputes.[6]

The Court originally consisted of a President, appointed by the Chief Justice, one independent member appointed by the Minister of Labour, and one representative each from both the union and the management side. Later, as the volume of work increased, four additional members each from a panel of nominations from the Federation of Kenya Employers and the Kenya Federation of Labour were appointed by the Minister of Labour. In 1965, a new Trade Disputes Act was passed, which in addition to the presidency, created two positions of vice-presidents of the Court, and established two panels, each consisting of ten members, representing employers and unions.[7]

A Vice-President may act alone as chairman of the Court if so directed by the President, and panel members may be called upon by the President to assist him in making awards. Disputes may be brought to the Court either directly by the two parties, or indirectly by the Minister of Labour. The Minister may have recourse to a number of ways of settling the dispute. He may refer the dispute back to the parties, appoint a conciliator or a conciliation panel, order an investigation into the dispute through a committee of investigators or a board of inquiry, or refer it to the Industrial Court. Reference to the Industrial Court is tending increasingly to replace other methods of settlement of industrial disputes. The award made by the Court becomes "an implied term of every contract of employment between the employers and employees to whom the award relates".[8] Once accepted, it becomes binding on both the parties. There is no provision for appeal from awards of the Industrial Court to the High Court. Questions of interpretation of the Industrial Court decisions must be referred back to the Court itself.

The Court is empowered to hear disputes in both the private and the public sectors and to make awards in respect of all employees with the exception of those who might be classified as constituting the management.[9] It has powers to adjudicate on a wide range of issues such as wages and salaries, pension schemes, gratuity, housing, leave, allowances of various sorts, hours of work, redundancy, severance pay etc. There was a rapid increase in the volume of work handled by the Court in the first two and half years: in the first six months of its operation, the Court heard a total of 18 cases; the corresponding figures for 1965 and 1966 were 65 and 89, falling to 49 in 1967. The 1967 and early 1968 figures indicate that the number of disputes heard by the Court might stabilise around 50 or so per year. The relatively large number of disputes brought before the Court in 1965 and 1966 reflected in part the end of the period of wage standstill following the termination of the Tripartite Agreement in April, 1965. But the subsequent improvement derives from two other factors as well: the increase in the length of the period for which awards are given, and the better use of the conciliation machinery before the dispute is taken to the Industrial Court. A case brought before the Court usually gets a hearing within a period of six weeks; the average

period between the first registration and the decision on a dispute has tended to be about 90 days.[10] The Kenya Industrial Court is fortunate in not having a considerable backlog of cases such as is common in most other countries.

Table I(a) shows the sectoral distribution of the firms appearing before the Industrial Court over the period 1964-1967. As might be expected, well over 65% of the cases fall in two sectors - manufacturing and commerce. It is somewhat surprising to find that no firms in the construction industry have been involved in disputes before the Industrial Court.

Table I(a)

Sectoral Distribution of Firms Involved in Industrial Court (I.C.) Cases, 1964 - 1967

Sector	No. of I.C. Cases	% of Total
Manufacturing	82	44.8
Commerce	38	20.7
Services	23	12.6
Government	16	8.7
Agriculture	10	5.5.
Transportation and Communication	9	4.9
Mining	3	1.6
Electricity and Water	2	1.1
Building	0	0
	183[a]	100.0

Source: Industrial Court Causes;

[a] Out of the total recorded cases of 221 over the 1964-67 period, there were three decisions involving a total of 22 small engineering firms. Here they are recorded as 3 cases, and not 22 as in the official cause list. There are no Court records for 19 cases.

Table I(b) compares the sectoral distribution of industrial and commercial firms (excluding government and agriculture) appearing before the Industrial Court with that of all such firms in the country. It will be noticed that although manufacturing firms formed only a quarter of all

industrial and commercial firms in 1965, they accounted for well over half of all disputes heard by the Industrial Court. On the other hand, firms in the commerce and services sector are underrepresented in the hearings before the Court. The predominance of manufacturing can be explained by the relatively larger size and greater strength of trade unions in this sector. Conversely, the lower representation of firms in commerce and services and their complete absence in building and construction in the Industrial Court cases would appear to be largely due to the smaller size of firms and relatively weak trade unions in these sectors.

Table I(b)

A Comparison of the Sectoral Distribution of all Commercial and Industrial Firms, 1965 and those involved in I.C. Cases

Sector:	Number of all firms	% of Total firms	% of I.C. cases
Manufacturing	6,991	24.8	52.2
Commerce	9,655	42.2	24.2
Services	5,667	30.5	14.7
Transportation and Communication	301	1.3	5.7
Mining	40	0.2	1.9
Electricity and Water	9	-	1.2
Building	236	1.0	0
	22,899	100.0	100.0

Source: For all industrial and commercial firms, Statistical Abstract, 1966; for I.C. cases, see Table I(a).

It is of some interest to determine the size distribution of firms involved in Industrial Court cases. As this information is not easily available for all firms, we selected a sample of 37 firms which appeared before the Industrial Court in 1966-67. Table II shows the size distribution of all industrial and commercial firms along with that of the 37 firms in our sample. While 84% of the total number of firms have four or fewer employees, none of the firms in our sample employed less than five persons. Conversely, while less than 3% of all firms employed 50 or more persons, over 70% of the firms in

our sample fall in this category. This predominance of large and medium sized firms in the disputes appearing before the Industrial Court is undoubtedly to be explained by the superior strength and organisation of the trade unions in these firms.

Table II

Size Distribution of firms appearing before the Industrial Court, and of all Commercial and Industrial firms, 1965.

No. of Firms	No. of Employees					
	1 - 4	5 - 9	10 - 19	20 - 49	50 +	Total
All Commercial and Industrial firms	19,207	1,474	942	754	517	22894
% of total	83.9	6.4	4.1	3.3	2.3	100.0
Sample of Industrial Court cases in 1966 and 1967	0	2	3	6	26	37
% of total	0	5.4	8.1	16.2	70.3	100.0

Sources: 1965 size distribution of firms, Kenya Statistical Abstract, 1966. The Industrial Court sample was compiled from the Federation of Kenya Employers (F.K.E.) records; of the 48 disputes involving wages in 1966 and 1967, the F.K.E. had employment records for 37 firms only.

Analysis of the Industrial Court decisions.

We turn now to an analysis of the Industrial Court decisions. The decisions of the Court are generally published in a summary form; they contain information on the issues in dispute, the submissions of the two parties to the dispute, and the award itself. Only in a minority of cases is information published on the old and new wage rates, the number of employees in the various categories, and the reasons for the award. In no cases is information published on prices, production costs etc. We have had, therefore, to supplement the published information through questionnaires and interviews with a small sample of firms. Even so, it was not possible to obtain all the information necessary for a complete economic analysis of the decisions of the Industrial Court. We shall, therefore,confine ourselves to an evaluation of the impact of the Court decisions on the level and structure of wages, fringe benefits, and the incidence of strikes.

a) Level and Structure of Wages.

As might be expected, wages have been the most frequent issue among the disputes brought before the Industrial Court: during the period 1964-67, 100 out of a total of 221 cases were concerned with wages. As Table III shows, out of these 100 cases, nil award was given in only 4 cases, three of which occurred during the wage standstill agreement of 1964. It would, therefore, appear that once a dispute is brought before the Industrial Court, there is the virtual certainty of a wage increase. Another important characteristic of the Court wage awards has been their progressive nature i.e. the relative increase in wages declines with increasing wages. Table III shows the classification of wage awards by this criterion. It would be seen that well over -80% of the known wage awards have been progressive, and a little less than 7% regressive. The progressive nature of the Court's awards is in part a reflection of its deliberate policy to reduce wage differentials among workers of varying skills. But it also results from the common, administratively convenient practice of awarding a flat wage rate increases to most categories of employees, usually 20 to 30 shillings per month. The Court decisions have, therefore, over the years contributed to a considerable squeezing of wage differentials.

Table III

Industrial Court Wage Cases

	1964		1965		1966		1967		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Nil	3	33.3	0	0	1	3.2	0	0	4	4
Neutral	0	0	4	10	1	3.2	1	5	6	6
Progressive	5	55.5	27	67.5	24	77.4	14	70	70	70
Regressive	0	0	3	7.5	3	9.7	0	0	6	6
Unknown	1	11.1	6	15	2	6.4	5	25	14	14
Total	9	99.9	40	100	31	99.9	20	100	100	100

It is possible to investigate three further properties of the Industrial Court wage decisions: the range of relative wage increases, the median wage rate increases, and the duration of the award. Table IV below shows the range of relative wage rate increases for the lowest and the middle level category of workers.

Table IV

Range of Relative Wage Rate Increases: Per-centages.

	Lowest category	medium category
1965	3.8 to 38.5	3.3 to 30.0
1966	0 to 41.6	0 to 33.0
1967	10.0 to 17.0	6.7 to 10.8

The lowest category represents the increase given to workers receiving the lowest wage in each Court case thus representing unskilled labour. The medium category represents the increases given to workers receiving the median wage in each case, unless there were an even number of wage categories, in which case the category chosen was the one of the two middle categories that had the percentage increase nearest the average for the entire case.[11]

The one important point that emerges from the table is that there has been a distinct reduction in the range of wage rate increases in 1967, with an increase in the minimum and a reduction in the maximum; this is true of both the lowest and the medium category of workers. This reduction in the range of wage rate increases has been matched by a similar reduction in unweighted average wage rate increases. Table V below shows these increases for different years for the two categories of workers distinguished above.

Table V

Percentage Increases in Average Wage Awards:

	Lowest category	Medium category
1965	16.3	12.6
1966	14.1	10.2
1967	12.3	8.7

This effect has been further intensified by a progressive increase in the duration of the award, as shown in Table VI.

Table VI

Average duration of the award: months.

1964	12
1965	12.4
1966	16.3
1967	20.5

This has resulted in a further effective reduction of average wage rate increases on a per annum basis, as shown in Table VII.

Table VII

Relative wage rate increases per annum: percent.

	Lowest category	Medium category
1965	15.8	12.2
1966	10.4	7.5
1967	7.2	5.1

These figures thus show that there has been quite a substantial effective reduction in wage rate increases awarded by the Court over the period 1965-67. For both categories of workers, the average wage rate increases in 1967 were well below half the 1965 figure. With the current practice of making two year awards, the above trend towards lower wage rate increases seems to be continuing. To what extent is the progressive reduction in wage rate increases a conscious policy decision by the Industrial Court? In order to answer this question fully, it is necessary to say something about the criteria employed by the Court in its wage decisions.

Criteria for Wage Decisions.

Unlike arbitration bodies in some other countries, the Industrial Court in Kenya has not been issued with any criteria to be applied to its wage awards. This leaves the Court with considerable freedom and flexibility

in devising its own criteria for wage determination. As the Court does not normally give reasons for its awards, these criteria can only be deduced from its decisions. From a study of its decisions, at least in the early years - till the end of 1966 - it would appear that the Court has interpreted its role as consisting essentially of facilitating the process of bargaining, and making awards which would be acceptable to both parties. Given this objective, it would clearly have been inconvenient to have been tied to a rigid criteria of wage determination. Nevertheless, a study of wage awards shows that the Court has followed certain broad guide lines in its wage decisions. These may be summarized as follows:

i) Living Wage

The concept of "living", or "decent" or "fair" wage is applied to the firms and industries where wages are particularly depressed.[12] By its very nature, it is difficult to specify a single figure which constitutes living wage. This would vary from area to area, but in general is likely to be in the neighbourhood of the legal minima for different areas.

ii) Cost of Living

If (i) is not relevant, then the Court attempts to make an award which not only compensates workers for any increases in the cost of living, but results in a real increase in their standard of living. This is made clear in the following quotation from one of the Court's decisions: "The Court has to consider various factors before a wage increase is granted. An increase in the cost of living is only one of such factors. One of the other important factors which cannot be overlooked is that the worker should be able to get something more than the compensation for the loss of money value, in order to move towards the ultimate objective of enjoying a higher standard of living. But this can be granted only if under competitive conditions an industry can be shown to be capable of paying a full living wage. This has further got to be consistent with the growth of the economy in the country and its Development Plan."[13] The latter part of the above statement makes clear that the exact amount by which living standards are to be improved is determined largely by what might be called the "ability to pay" of the firm or industry in question.

iii) Ability to pay.

This criterion has become increasingly important in influencing the decisions of the Industrial Court. This is evident not only from the trend towards smaller wage rate increases, particularly in 1967, but also from the pronouncements made by the Court itself. In the context of wage decisions, the ability to pay criterion may be given the following interpretations:

a) wage award must not be such as to lead to a closure of the business.[14]

b) it should not lead to a significant price rise.

c) it should not result in a reduction in employment.

It is not contended here that these considerations have completely determined the Industrial Court wage decisions in recent months, but simply that the Court has paid increasing attention to these factors. Employment implications of wage awards have always weighed heavily with the Court, but this concern was given a particularly forceful expression in the recent Industrial Court decision on a dispute between the Kenya Plantation and Agricultural Workers' Union and the Kenya Tea Growers' Association. In the course of making its award, the Court stated:

> There are extremely far reaching considerations at stake in this dispute as there is no denying the fact that a person working on the land in comparison with other workers receives very inferior wages and benefits. The Claimant's arguments in this respect are valid. But the most formidable problem in Kenya is that of unemployment. The Government has made it abundantly clear that its policy was to increase employment even if this meant the application of some form of brake on wage increases."[15]

It is clear that in making these remarks the Court had been impressed by the employers' arguments that the past wage increases had had adverse effects on the volume of employment in the tea industry. The trend towards smaller wage rate increases and greater sensitivity to the broader economic effects of individual wage awards reflects in large part the continuing concern throughout East Africa with employment expansion and reduction of rural-urban income differentials.[16] But in the absence of a detailed articulation of an official incomes policy, the Court's primary objective must naturally continue to be to arrive at compromise decisions which would be acceptable to both the parties.

Effect on Wage Levels

Finally, before turning to other economic aspects of the Industrial Court decisions, we must assess the impact of its wage awards on the process of wage determination. More specifically, we must attempt an answer to the question as to whether the Industrial Court has introduced an upward bias in the machinery of wage determination. It is here necessary to point out that the impact of the Court decisions is not confined to the relatively small proportion of employees directly affected.[17] The Court awards are often taken as a norm by related firms and industries, and often their influence extends even further.

Some a priori considerations would indicate that the Court awards have affected the process of wage determination in the upward direction. We have argued above that the Court has interpreted its role as consisting essentially of facilitating the process of bargaining. Its decisions, therefore, per force had been influenced by the need to reach a quick settlement of the dispute, acceptable to both the parties. This, coupled with the relatively greater political power of the trade unions and the need to ensure their acceptance of the award, can be expected to introduce an upward bias in wage awards. The awards made by the Court in its earlier years seem to have been influenced by such considerations. It is, however, likely that their importance has declined in more recent decisions. Even if this argument did not hold, it would seem that the "demonstration effect" of the Court awards might have had the effect of pulling the general wage structure upwards. Most of the firms appearing before the Court are relatively large and have strong trade unions. It would appear that the wage awards won by employees in such firms exercise a strong impact on wages in smaller, less favourably endowed firms in the same industry. Often these awards are regarded by the trade unions as the minimum or appropriate awards for all firms in the industry, and carry the moral authority of the Court decision.

Unfortunately we do not have adequate data to test empirically the effect of the Court wage awards on the level and structure of wages. Such evidence as is available would appear to support the hypothesis that the Court awards have introduced an upward bias in the process of wage

determination. When the managements of the 13 firms in our sample were asked the question whether the Court award was higher or lower than they would have granted in free negotiations, their replies were as follows.[18]

Higher	-	5
Same	-	5
Lower	-	1
Not known	-	2

This might suggest that the Court awards have introduced an upward bias in wage determination. However, it must be remembered that these are employers' opinions. A similar poll conducted among the trade union representatives would undoubtedly come out with a contrary conclusion.

Some further evidence on the question is provided in Table VIII which compares the Industrial Court wage awards with the relative increase in earnings of employees in selected sectors of the economy.

Table VIII

Comparison of wage awards and relative increase in earnings in the whole economy

Industrial Court: p.a.		For the Whole Economy				
Lowest	Medium	All Sectors	Private Sector exc. Agric.	Commerce	Manuf.	Services
1961 -	-	11.7	11.0	N.A.	N.A.	N.A.
1962 -	-	0.6	1.6	N.A.	N.A.	N.A.
1963 -	-	12.2	15.2	N.A.	N.A.	N.A.
1964[a] -	-					
1965 15.8	12.2	7.9	7.2	10.0	5.4	7.3
1966 10.4	7.5	10.4	10.5	7.1	14.2	3.6
1967 7.2	5.1	3.7	- 3.1	15.0	2.5	1.6

Source: Table VII for Industrial Court awards; Economic Survey, various years for others.

a. No calculations have been made for 1964 because of a change in the coverage of employees during the year.

These figures are not completely comparable, as the relative wage increases in Industrial Court cases are average awards for lowest and medium level wage groups; they are not weighted by the number of employees in these categories in individual firms; nor do they refer to all employees. The earnings figures, on the other hand, show average increase in earnings of all employees. If we disregard this difficulty, we notice that for the period 1965-67 the average increase in wage rates awarded by the Industrial Court to lowest wage earners is in excess of the increase in earnings in all relevant sectors of the economy. The increase in average wages awarded to medium level employees by the Industrial Court over the same period is exceeded only by the relative increase in the earnings of employees in the commerce sector. Thus wage increases awarded by the Industrial Court are higher than the increase in average wages of all employees or of employees in the relevant sectors with the possible exception of commerce.[19]

This, however, is not necessarily a conclusive evidence in favour of the hypothesis that the Court awards have exercised an upward influence on the general level of wages. Quite apart from the statistical difficulties noted above, our figures clearly do not and cannot demonstrate that the average wage rates in the firms appearing before the Industrial Court would have risen by less if wages had been determined by voluntary negotiations. Nevertheless, it would be reasonable to conclude from the theoretical arguments and the available empirical evidence that the Industrial Court introduced an upward bias in the process of wage determination in Kenya over the period 1965-67.

Fringe Benefits

We have not been able to study the Industrial Court decisions on fringe benefits in any great detail. Nevertheless, some generalisations can be made on the basis of a limited examination of the Court awards. In general, the Court appears to have been less generous in its awards on fringe benefits than in its wage awards; nil awards are quite common. It has, however, attempted to achieve greater uniformity for some important items of fringe benefits than in wage awards. For paid leave the Court in 1964 and 1965 made both 18 and 21 day awards, but in 1966 began to grant only 21 day awards,

with slightly longer leave periods for some employees with seniority. Nevertheless, this represents only a slight increase in Court award levels. The rates for overtime work have tended to be standardised: $1\frac{1}{2}$ times the normal rate for ordinary overtime, and twice the normal rate for Sunday and holiday overtime work. With respect to hours of work, although nil awards have exceeded the awards shortening the work week by two and a half times, the general trend has been towards a reduction in hours of work per week. The norm in 1964 and 1965 was 44 hours per week, but in the subsequent decisions there has been an increasing tendency towards awards of 42 hours per week - e.g. about one-half of late 1966 and 1967 awards have been for a 42 hours week. This in effect amounts to an increase in wages of about 4.5%. Decisions on most other fringe benefits vary a good deal and show no common trend. Thus the effect of decisions on fringe benefits has been to further increase the real income of wage earners, though the increase appears to have been a relatively small one.

Strikes

It was noted earlier that an important reason for the creation of the Industrial Court was to reduce the incidence of strikes. And indeed, as Table IX below shows, there has been an impressive decrease in both the number of strikes and man-days lost since 1963; the 1967 figure for man-days lost is less than half the 1963 figure.[20]

Table IX

Number of Strikes and Man-Days Lost

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
No. of Strikes	96	67	232	167	285	230	221	200	155	138
Mandays lost	59,096	431,973	757,860	120,454	745,799	235,000	167,767	345,855	144,253	109,1

Source: Annual Report, 1965, Ministry of Labour; Annual Report, 1967, Federation of Kenya Employers.

It is, however, difficult to say to what extent the Court is responsible for this improvement in industrial relations. In the first place, it must be

noted that the really significant improvement from the immediately pre-independence years of heavy industrial strife took place in 1963 before the establishment of the Industrial Court. Two developments contributed to this improvement: the formulation of an "Industrial Relations Charter" in late 1962,[21] and the achievement of internal self-government in mid-1963. The former did much to establish proper procedures for the settlement of industrial disputes, and the latter contributed by promoting political stability and a greater sense of involvement by trade unions in the running of the country. Similarly, the remarkable reduction in the number of strikes and man-days lost since 1963 is largely attributable to two factors: (a) a greater sense of restraint and responsibility encouraged by the government on both sides of the industry. In particular, there seems to have been an improvement in the attitude of employers towards their employees and trade unions, in part due to the efforts of the Federation of Kenya Employers (F.K.E.). Also, reduced friction and greater unity in the trade union movement brought about through the creation of the Central Organisation of Trade Unions (COTU) has enabled greater control to be exercised by the Unions over unauthorized strikes: in addition, COTU, like the FKE, has encouraged better union-management relations. (b) But perhaps of even greater importance are the provisions of the Trade Disputes Acts of 1964 and 1965 with respect to strikes and lockouts. The Minister of Labour is empoowered by the 1965 Act to prohibit arbitrary strike or lockout action. The Minister may declare a strike or lockout (actual or threatened) unlawful if the parties have not exhausted their negotiating machinery or where there is an agreement or award regulating the matters under dispute or, furthermore, where the action is sympathetic and not related to a dispute with the employees' own industry.[22] Strikes in the essential services are subject to even greater restrictions. At the same time the Trade Disputes Acts strengthened the machinery for conciliation and arbitration, including the creation of the Industrial Court. The contribution made by the Court to industrial harmony cannot, therefore, be judged in isolation from the new system for the settlement of industrial disputes brought into being by the two Trade Disputes Acts. Judged as a part of the new system, there can be little doubt that the Industrial Court has made a major contribution in recent years to the reduction in man-days lost through strikes.

Conclusion

Judged by the purpose for which it was originally created - an independent instrument for the settlement of industrial disputes - the Industrial Court has been an outstanding success. It has won the support and respect of the government, the employers and the trade unions. In general the attitude of employers towards the Court is quite favourable. Of the 13 firms interviewed by us, 12 stated that they were satisfied with the wage decisions of the Court involving their firm. Likewise, most trade union leaders have expressed satisfaction with the working of the Industrial Court. The following policy statement by the COTU (K) indicates the official trade union attitude towards the Court:

"The COTU (K) supports the existing legislation for industrial arbitration. It believes that the operation of the Industrial Court has wholesome effect upon labour relations. COTU (K) shall continue to give its backing to fair arrangements designed to foster industrial peace..."[23]

The remarkable support enjoyed by the Court from both sides of the industry may be attributed to three main factors. Perhaps the most important of these is the reputation for independence and impartiality the Court has acquired since its inception. Both employers and trade unions feel that the Court is "fair" and "impartial" in its deliberations and decisions. This feeling in turn derives from the ability of the Court to identify common ground between employers and trade unions, and to achieve compromise solutions acceptable to both parties. Another reason for the popularity of the Court, particularly with the employers, derives from the widespread belief that the Court has made an important contribution to the reduction of strikes and mandays lost. Finally, the success of the Court is no small measure due to the personality of its President who has not only achieved the support of both the union and business communities, but also has expertly guided the Court from its infancy when its future was uncertain into a smoothly functioning body that now seems destined to continue to play a major role in Kenya's system of industrial relations.[24]

Despite its undoubted success, it would appear that a number of minor uncontroversial reforms could further strengthen the effectiveness of the Industrial Court. Increasingly the disputes are brought to the Court only after prior attempts at conciliation by the Ministry of Labour officials have failed. It would appear that an improvement in the quality of the conciliation personnel could further reduce the number of cases coming before the Court. Secondly, the system would function more efficiently if the President of the Court had the power to discipline people, possibly by committing them for contempt of Court. This may be expected to lead to a marked improvement in punctuality, general observance of the Court procedures, and in presentation of the cases by the two parties. Thirdly, the authority of the Court would be enhanced if its awards could be made binding on both the parties, as is presently the case with awards in disputes involving "essential services". Finally, the quality of the decisions made by the Industrial Court could be improved if it had access to expert advice on technical economic and statistical matters. Under the present system, the Court has to rely on its own evaluation of the information provided by the parties to the dispute.

Owing to limitations of time and expertise, the Court is naturally unable to give full consideration to all the economic issues involved in each case. The expert advice could be obtained either by attaching a small staff of economists, statisticians, and accountants to the Court, or by making available to it the expertise that already exists in government ministries and independent research bodies. The latter solution is more economical of manpower and will at the same time ensure that the government policy is duly taken into account in the deliberations of the Court.[25]

There would appear to be considerable support from both sides of the industry for the above reforms in the Industrial Court. The same, however, cannot be said for the suggestion that the Court should formulate and implement a coherent well-thought out incomes policy. It was noted earlier that the Court has served largely as an adjunct to the machinery of collective bargaining. Although it has paid increasing attention in recent years to the wider economic and social implications of its awards, there is nothing

in its constitution or terms of service which requires it to do so. And indeed such a view of its functions could seriously jeopardise its effectiveness in resolving industrial disputes. Although the government has on a number of occasions outlined the broad aims of public policy in this field, it has not so far articulated a detailed incomes and prices policy. If and when such a policy were formulated, the Industrial Court could serve as an instrument of its implementation. The Court starts with some important advantages. It enjoys the confidence of both sides of the industry, has obtained valuable experience in the field of industrial relations, and is becoming increasingly sensitive to the broader social and economic implications of individual wage awards. Nevertheless, an assumption of a role of this sort would imply fundamental changes in the nature and objectives of the Court. It would transform it from an independent peace keeping body into an instrument for the imposition of government policy on wages and prices. This is bound to lead to a revision of the trade union attitudes towards the Court, and to a reluctance to carry the disputes to the Court. In addition, if it is to exercise some influence on wage rate increases throughout the economy, the Court will need to be invested with powers to approve all wage agreements, even those arrived at through voluntary, collective bargaining, in order to ensure compliance with the criteria for wage increases laid down by the government. This would clearly make the work of the Court more difficult and controversial; and its success in this role would be determined less by its own competence and understanding of industrial relations than by the success of the government in persuading the country, particularly the trade unions and the employers, of the need for such a policy.

F O O T N O T E S

1. The dates of their establishment are: Ceylon (1950), Singapore (1960), Kenya (1964), Uganda (1964), Trinidad (1965), and Tanzania (1967). A brief, comparative discussion of some of these courts will be found in a pamphlet issued by the Organization of Employers' Federations and Employers in Developing Countries, Industrial Courts in Developing Countries, (London, 1967).

2. Some of the reasons for the inappropriateness of the voluntary, collective bargaining in developing countries are discussed in H.A. Turner, Wage Trends, Wage Policies and Collective Bargaining: the Problems for Underdeveloped Countries, (Cambridge, 1966): and Peter Kilby, Industrial Relations and Wage Determination: Failure of the Anglo-Saxon Model, in the Journal of Developing Areas, pp. 489-519; July 1967.

3. The development of the notion of "public interest" as interpreted by the Courts in Australia and Singapore is discussed in two articles by Paul L. Kleinsorge, Public Interest as a Criterion in Settling Labour Disputes: The Australian Experience, Journal of Industrial Relations, July 1964, pp. 1-22; and, Singapore's Industrial Arbitration Court: Collective Bargaining with Compulsory Arbitration in Industrial and Labour Relations Review, July 1964, pp. 551-565.
   For Tanzania, see The Permanent Labour Tribunal Act, 1967, Parts II and V..

4. For more details on all this, see the following articles: D. J. Musch, The Kenya Industrial Court, East Africa Law Journal, Vol. 2, No. 4, pp. 266-280: S. Cockar, The Industrial Court and Labour Relations in Kenya, East Africa Law Journal, Vol. 2, No. 4, pp. 257-65; F. Livingstone, The Government, the Worker and the Law in Kenya, East Africa Law Journal, pp.

5. This was an agreement between the government, employers and trade unions in Kenya. It reflected the government's concern with rapidly mounting unemployment in the years immediately prior to independence. Under the terms of the agreement, the Government undertook to increase its employment by 15%, the employers by 10%, and the trade unions accepted a policy of wage standstill for a year. After the expiry of one year period, the agreement was extended by another two months, See, Agreement on Measures for the Immediate Relief of Unemployment; in Ministry of Labour and Social Services, Annual Report, 1964, Republic of Kenya.,

6. In the course of debates on the Trade Disputes Act, 1964, Mr. Odero-Jowi, the Parliamentary Secretary for Labour and Social Services, stated,
   "Experience has shown that not all disputes are amenable to arbitration or inquiry... We find that the best solution to some of these disputes is an Industrial Court. Moreover, we think that an Industrial Court would be the final and impartial channel for settling disputes, so that we minimize the impact of strikes." Official Report, the National Assembly, Vol. II, pp. 911-12; 17th March 1964.
   Mr. Mboya, then the Minister of Justice and Constitutional Affairs, stated;
   "... in the past, we relied entirely on some ad hoc machinery which consisted of appointing an arbitrator from time to time... at times when you needed a very specialized person and could not get him, you had to accept the services of a second best ... By setting up a permanent Court, we will be able to appoint persons who are capable and who will be available... when matters should be referred to them... we will be able to build up a body of precedence that can be used in most of the cases as they arise...". Ibid, pp. 968-69.

7. The Trade Disputes Act, 1965, Part III, section 9.

8. Ibid , section 10.

9. The only other group of employees excluded from the jurisdiction of the Industrial Court are those employed (a) in a military, naval or air force, or in reserve force thereof; (b) in a police force, tribal police force, or prison service, or in the National Youth Service, or in reserve force or service thereof..."; section 3, Trade Disputes Act, 1965.

10. D. J. Musch, op. cit., p. 266.

11. Wages in Kenya are often paid by grade levels, i.e.

I	180/-
II	220/-
III	230/-
IV	270/-
V	340/-

The Court would probably made an award for all five grades, either a flat increase for all grades, or a different increase for each grade. Here Grade I would appear as the lowest category, and Grade III as the medium category, in Table IV.

12. This criterion was explicitly stated to have influenced the Court decision in the following causes: No. 3 of 1964, No. 21 and 24 of 1965.

13. Cause No. 89 of 1966, quoted in Industrial Courts in Developing Countries, op. cit., p. 10.

14. See recent Court cases 76 of 1966, 12 of 1967, and 30 of 1967.;

15. Cause No. 40 of 1967.

16. In this connection, see The Report to the Government of the United Republic of Tanzania on Wages, Incomes and Prices Policy, by International Labour Office (Government Printer, Dar es Salaam, 1967), and the accompanying White Paper on Wages, Incomes, Rural Development, Investment and Price Policy (Government Printer, Dar es Salaam, 1967). These issues are discussed in the Kenya context in D.P. Ghai, Incomes Policy in Kenya: Need, Criteria and Machinery, East African Economics Review, June, 1968. In his Budget speech, 18 June, 1968, the Minister of Finance, Mr. Gichuru, stated that the Kenya Government intends soon to introduce an incomes policy in the country. See also, J. R. Harris and M.P. Todaro "Urban Unemployment in East Africa: An Economic Analysis of Policy Alternatives," East African Economic Review, Vol. 4, No. 2, December 1968.

17. In 1967, approximately 65,000 employees were directly affected by the Court decisions. This represents 10.9% of the total recorded employment, and about 16.3% of private recorded employment. Since, however, only about 50% of the latter is unionised, the numbers affected by the Court decisions amount to about 32.5% of the union members. The 1967 figures, however, were swollen because of the inclusion of tea workers in Cause No. 40 of 1967.

18. The 13 firms selected were located in or around Nairobi and Mombasa; they represent a considerable range in commodities, and number of employees. Since the firms were questioned on 1966 and 1967 awards, which tended to be lower than 1964-65 awards, our sample, if anything understates the proportion of employees who feel that the Court awards have been higher than they would have given in free negotiations.

19. We have understated the increase in wage rates awarded by the Industrial Court by our failure to include in it the effects of decisions on fringe benefits. These effects are included in the figures on average earnings of all employees.

20. The rise in the number of man-days lost in 1965 was due to the occurrence of a few strikes by large unions such as Railway African Union, Kenya Distributive and Commercial Workers Union, The Kenya National Union of Teachers, and the Union of Posts and Telecommunications Employees (Kenya).

21. This was drawn up in September, 1963, by a tripartite Industrial Relations Conference, consisting of the Minister of Labour, representatives of the Federation of Kenya Employers and the Kenya Federation of Labour. The text of the Charter is reprinted in B.C. Roberts and L. Greyfie de Bellecombe, Collective Bargaining in African Countries, (Macmillan, London, 1967), pp. 131-137.

22. Livingstone, op. cit. p.

23. A Statement of Policy issued by the Central Organization of Trade Unions (Kenya), 8 November, 1966 (mimeo), p. 1.

24. For an outline of Mr. Cockar's approach to the Industrial Court and labour problems, see his article "The Industrial Court and Labour Relations in Kenya", in the East African Law Journal Vol. 2, 1966 pp. 257-265.

25. The Permanent Labour Tribunal in Tanzania is permitted, indeed expected, to seek advice from any government officer or department, or any other outside body which has the necessary expertise.